

R381-40-3. LICENSE REQUIRED.

Individuals and businesses that provide care for children are licensed and regulated by Child Care Licensing (CCL) unless they are specifically exempt under Utah law. The rules in this section explain who is required to be licensed. In licensed facilities, CCL rules apply to all qualifying children.

(1) A person shall have a preschool program license if they provide care:

- (a) in the absence of the child's parent,**
- (b) in a place other than the provider's home or the child's home,**
- (c) for five or more qualifying children between the ages of two and four years old, and five years old if the child is not attending school;**
- (d) for each individual child for less than four hours per day;**
- (e) on an ongoing basis for more than two days a week and for four or more weeks in a year;**
- (f) for direct or indirect compensation; and**
- (g) where care does not include preparing meals for children.**

Rationale/Explanation

Within the early care and education system, licensing provides the baseline of protection for children and covers the broadest content, the largest number of children from birth to school age, and the largest population of providers. Licensing helps prevent various forms of harm to children—risks from the spread of disease; fire and other building safety hazards; injury; and developmental impairment from the lack of healthy relationships with adults, adequate supervision, or developmentally appropriate activities. National Center on Early Childhood Quality Assurance. Research Brief #1: Trends in Child Care Center Licensing for 2017.

Compliance Guidelines

- A license is only required when a provider cares for 5 or more qualifying children.
- Individuals who care for fewer than 5 children are not required by law to be regulated. However, an individual or business may request to be regulated by Child Care Licensing if they care for at least one qualifying child under the other conditions listed in 40-3(1)(a)-(g) above.
- Programs that provide 24-hour, live-in care are regulated as residential treatment facilities and are not licensed by Child Care Licensing.
- An “ongoing basis” means that children attend the program on a regular schedule, as opposed to occasional drop-in care.

- Direct compensation means that there is a cash payment for providing child care. Indirect compensation is a noncash payment of goods, time, or services for the child care that is provided.
- Noncompliance with this rule will be determined by the CCL complaint investigator.
- Programs licensed as a Commercial Preschool can serve food to children, however they cannot prepare food. Preparing food is defined as cooking or baking raw ingredients. Curriculum activities that use food will not be assessed.

Examples of serving food:

- Opening a prepared food and putting it on a plate.
- Cutting up fruits or vegetables.
- Pouring milk into individual cups.
- Serving meat that does not have to be cooked, like lunchables.
- Warming up a fully cooked food item.

Examples of preparing food:

- Cooking raw meat.
- Combining raw ingredients to be cooked or baked, like baking bread.
- Cooking raw eggs.

Risk Level

High

Corrective Action for 1st Instance

Citation and CMP Warning

- (2) **A person who is not required to be licensed may voluntarily become licensed, except for care that is for related children only or on a sporadic basis.**

Rationale/Explanation

When a provider cares for related children only, in order to receive child care subsidy payments from the State, the provider must obtain an approval from the Division of Workforce Services (DWS). Instructions for obtaining this approval may be found at: childcarelicensing.utah.gov.

A license is unavailable for occasional drop-in child care.

- (3) **A provider may be licensed to provide child care in a facility that is also licensed to offer foster or respite care services, or another licensed or certified human services program, if the part of the building requesting a CCL license is physically separated from the other building services.**